

Notice of Allowability	Application No.	Applicant(s)	
	09/841,609	LIVSHITS ET AL.	
	Examiner	Art Unit	
	Kathleen M. Kerr	1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/15/05.
2. ☒ The allowed claim(s) is/are 4 and 7.
3. ☒ The drawings filed on 25 April 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>2/15/05</u> 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____. |
|---|---|


 Kathleen M Kerr
 Primary Examiner
 Art Unit: 1652

RD

DETAILED ACTION

Application Status

1. A request for continued examination under 37 C.F.R. § 1.114, including the fee set forth in 37 C.F.R. § 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. § 1.114, and the fee set forth in 37 C.F.R. § 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 C.F.R. § 1.114. Applicant's submission filed on February 15, 2005 has been entered.

2. In response to the previous Office action, a final rejection (mailed on November 18, 2004), Applicants filed a request for continued examination (RCE) and an amendment received on February 15, 2005. Said amendment amended Claims 4 and 7 and cancelled Claim 8. Thus, Claims 4 and 7 are pending in the instant Office action.

Election

3. Amended Claims 4 and 7 are drawn to a previously non-elected group. While switching of inventions is not a right in RCE practice, it is at the Examiner's discretion. The Examiner herein is allowing a change of invention for the prosecution of Claims 4 and 7 now drawn to methods instead of the previously prosecuted products.

Priority

4. As previously noted, the instant application is granted the benefit of priority for the foreign application 2000110350 filed on April 26, 2000 in Russia.

Information Disclosure Statement

5. The information disclosure statement filed on February 15, 2005 has been reviewed, and its references have been considered as shown by the Examiner's initials next to each citation on the attached copy. The "other reference", an EPO office action, has been considered but crossed through so as not to be printed on the face of the file since it is not a publication per se.

Withdrawn - Claim Rejections - 35 U.S.C. § 102

6. Previous rejection of Claims 4 and 7 under 35 U.S.C. § 102(b) as being anticipated by Bockmann *et al.* is withdrawn by virtue of Applicant's amendment. Nowhere in Bockmann *et al.* is the production and collection of amino acids taught or implied using the products taught by Bockmann *et al.* Thus, the pending method claims are free of the art.

EXAMINER'S AMENDMENT

7. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

8. The application has been amended as follows:

a) Replace the title with the following title

---Methods of Making Amino Acids using *E. coli* Transformed with Csc Genes---

Reasons for Allowance

9. The following is an examiner's statement of reasons for allowance. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

As noted in the Final rejection mailed November 18, 2004, the genes used in the *E. coli* bacteria in the claimed methods are the csc genes (encoding a permease, an invertase, and a fructokinase) disclosed by Bockmann *et al.* Bockmann *et al.* teach the csc genes from the *E. coli* strain EC3132; the instant application teaches these same genes in *E. coli* strain W3350csc (see page 18 of the instant specification). Thus, the instant methods are drawn to using *E. coli* harboring one species of csc genes, specifically those disclosed by Bockmann *et al.*, to practice the claimed methods.

Conclusion

10. Claims 4 and 7 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M. Kerr whose telephone number is (571) 272-0931. The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr
Primary Examiner
Art Unit 1652

May 4, 2005